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10/586,639	07/19/2006	Atsushi Matsutani	292764US8PCT	5943

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EXAMINER	
HARVEY, DAVID E	

ART UNIT	PAPER NUMBER
2481	

NOTIFICATION DATE	DELIVERY MODE
11/26/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/586,639	MATSUTANI, ATSUSHI	
	Examiner	Art Unit	
	DAVID E. HARVEY	2481	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 October 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2010 has been entered.

2. The abstract of the disclosure is objected to because it is not of proper content/format; i.e.:

A) It does not appear provide a summary of the recited invention .

Correction is required. See MPEP § 608.01(b).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A) MEANS PLUS FUNCTION (with respect to claim 1):

1) The examiner note that for a computer-implemented means-plus-function claim limitation that invokes 35 112, sixth paragraph, the corresponding structure is required to be more than simply a general purpose computer or microprocessor.[1] The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer or microprocessor.[2] The written description of the specification must at least disclose the algorithm that transformed the general purpose microprocessor to a special purpose computer programmed to perform the claimed function.[3] Applicant may express the algorithm in any understandable terms including as a mathematical formula, in prose, in a flow chart, or in any manner that provides sufficient structure.[4]

2) Turning to Figure 14 of the instant specification, it is noted that the instant invention is comprised of:

a) A "general purpose computer" (i.e., @ 203);

b) Surrounded by specific peripheral circuitry (e.g., @ 200-202, and 204-215).

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[1] *See Aristocrat Technologies Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d. 1235, 1239-1240 (Fed. Cir. 2008)

[2] *See WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d. 1385 (Fed. Cir. 1999)

[3] *See Aristocrat*, 521 F.3d at 1338, 86 USPQ2d. at 1243.

[4] *See Finisar Corp. v The DIRECTV Group Inc*, 523 F.3d 1323, 1340, 86 USPQ2d. 1385 (Fed. Cir. 1999)

Further, Figures 25 and 28-30 appear to set forth a specific algorithm that, at least ***potentially***, transforms the general purpose computer (i.e., @ 203 of Figure 14) into a special purpose computer.

3) However, turning to instant claim 1, it is unclear to the examiner as to what part of the illustrated structure of Figure 14, and what part of the illustrated algorithm of Figures 25 and 28-30, constitute the "corresponding structure" for:

1) The recited "setting means";

2) The recited "communication means";

3) The recited "program table creation means ..."; and

4) The recited "recording scheduling means".

In this regard, as discussed in part "1)" of this section, a respective specific algorithm must be disclosed to support the function that is associated with each of the means; i.e., assuming a computer implementation of the means. That is, given the above, it appears to be insufficient for a given "means" of the claim to rely on a single "block" of a flow chart which block simply indicates that the recited function is performed, but does not specify the specific algorithm for proving it. More specifically, the examiner does not dispute the fact that the flow charts of Figures 25 and 28-30 contain respective functional blocks corresponding to the functions of the recited means, however, the examiner maintains that these block do not appear to specify the algorithm for the functions; i.e., the recited function simply corresponds to the respective label of a given processing block.

4) As such, the recited "setting means...", "communication means...", "program table creation mean...", and "recording scheduling means" recitations are means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, as discussed above, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or

acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

B) MEANS PLUS FUNCTION (with respect to claims 2-8):

1) For like reasons as were addressed above with respect to claim 1, the recited:

a) "time setting means" and the recited "control means" of claim 2;

b) "setting means…" and "communication means…" of claim 3;

c) "setting means…", "communication means…", "program table creation mean…" of claim 4;

d) "setting means…" and "communication means…" of claim 5;

e) "setting means…", "communication means…", "program table creation mean…" of claim 6;

f) "communication means…" of claim 7; and

g) "program table creation mean…" of claim 8

are means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, as discussed above, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or

acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

5. The following "prior art" is noted:

A) Japanese Patent Document #JP 2003319271 to Matsugami (Machine generated translation provided):

Matsugami has been cited because it evidence:

1) That is was well known in the art to have provided means for storing and displaying EPG data pertaining to programming broadcast in the past, present, and future **[e.g., note the last 6 lines of paragraph 0007 of the provided translation]**; and

2) That it was known to have utilized the EPG data pertaining to past programs as the basis for scheduling the recording of future programs **[e.g., note paragraphs 0024-0026 the provided translation]**.

6. The following is again noted:

A) The examiner maintains that the use of reservation information (i.e., "timers"), obtained from electronic program guides (i.e., EPG & IPG serves), to permit the automatically unattended recording of TV (and radio) programs, was notoriously well known in the art at the time of the invention. The following references are cited in support of the position:

1) WO 02/082808 to Drazin et al:
Note lines 9-15 on page 1.

B) The examiner maintains that it was well known in the art for the reservation information (i.e., the "timers") that were obtained from electronic program guides (i.e., the EPG & IPG serves) to have comprised respective program starting and ending times which where compared the current time, provided from a clock, in order to trigger the starting and stopping of a recording device to record the desired program. The following reference is cited in support of the position:

1) U.S. # 4,908,713 to Levine:
Note: lines 30-40 of column 2; and lines 17-29 of column 6.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

8. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al. and Japanese Patent Document #JP 2003-31927 to Matsugami (machine generated translation provide herewith).

I. The showing of Haagen:

A) It is noted that under Section 102(e), US Patent Document #2007/0072542 to Haagen is entitled to the 5/13/200 filing date of PCT/SE2003/0072542.

B) Haagen describes a wireless telecommunication device that comprises both a radio receiving component and a cellular telephone component **[note paragraph 0011]**, wherein the device includes:

1) A radio broadcast signal receiving means for receiving a broadcast signal transmitted from a given radio broadcast station **[e.g., note paragraph 0028]**;

2) Station setting means for setting/tuning the broadcast station to which the receiver means is tuned **[e.g., note paragraph 0028]**;

3) Circuitry for automatically determining to which broadcast station the receiving means is actually tuned/set **[e.g., note paragraphs 0029 and 0030]**; and

4) Communication means for establishing an interactive network connection with the identified broadcast station, and/or a web site representative thereof, whereby the user can access additional information pertaining to that station **[e.g., note paragraph 0050]**.

Haagen further discloses that one type of information that was conventionally provided by such broadcast stations was the song lists for the station which lists included current, previous, and coming song.

II. Differences:

Claim 1 differs from the showing of Haagen only in that Claim 1 indicates:

1) That the provided information comprises titles, broadcasting times and dates of the programming broadcast by the station, including previously broadcast programming; and

2) That the information concerning past programs can be selected and used as the basis for setting recording time of future programming.

III. Obviousness:

A) Horiuchi et al evidences the fact that it was known for WEB sites to have provided program guides **[e.g., note lines 4-7 of paragraph 0004]** and, more specifically, evidences that it was known for EPG creating units and web servers to have been located at the broadcasting station itself **[e.g., note lines 6-9 of paragraph 0022]**.

In light of the teaching of Horiuchi et al, it would have been obvious to one of ordinary skill in the art to have modified the system disclosed by Haagen whereby an EPG service was accessible by the wireless devices via the station specific web service; i.e., thereby providing an additional source of advertizing revenue for the broadcaster. The examiner takes Official Notice that it was notoriously well known in the art that such EPG services provided program title information, start, and end broadcast times for all programming broadcast by the station over a given range of times; which range conventionally includes past, current, and future broadcasts. The receiver of such EPG information inherently includes the circuitry that is required to display that portion of the accessed EPG information (i.e., table creation means).

B) Matsugami evidences the fact that it was known in the art to have modified receivers:

1) To permit the user to select the EPG data pertaining to past programs; and

2) To advantageously utilize the selected EPG data of past programming as the basis for searching the EPG data of future programming to find EPG information corresponding to a rebroadcast of the past programming and, thereby, enabling the

system to schedule the recording of previously missed/overlooked programs.

[e.g., note paragraphs 0024-0026 the provided translation]

The examiner maintains that it would have been obvious to one of ordinary skill in the art to have further modified the system disclosed by Haagen to include this clearly desirable capability; i.e., the ability to subsequently record missed/overlooked programming based on the EPG data of the past missed/overlooked programming.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al. and Japanese Patent Document #JP 2003-31927 to Matsugami, for the reasons set forth above for claim 1, further in view of US Patent #4,908,713 to Levine.

The examiner maintains that it would have been obvious to one of ordinary skill in the art to have modified the system disclosed by Haagen in accordance with the teachings of Horiuchi et al. for the reasons that were set forth above for claim 1.

Claim 2 differs from the modified system of Haagen in that it recites a broadcast program recorder, i.e., comprised of a time setting means, a timer/clock, a recording means, and a controller, for recording broadcasted programming based on reservation (i.e., timers) derived from the accessed EPG information.

Levine has been cited to evidence the fact that such recorders were well known in the art **[Note: part "B" in paragraph 6 of this Office action; and Figure 2 thereof]**. It would have been obvious to one of ordinary skill in the art to have further modified the system of Haagen to include such a conventional recorder and to use the accessed EPG service, in conventional fashion, to provide the required "timers" thereto.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami , in further in view of US Patent #4,908,713 to Levine as was set forth above for claim 2

When accessing an EPG from the EPG database (i.e., an "external" web serving device in the case of the modified system of Haagen) one must provided information identifying

the range of times to be displayed given that the only a portion of the EPG can be accessed and displayed at a time **[e.g., note Figure 1 of Levine].**

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami , in further in view of US Patent #4,908,713 to Levine as was set forth above for claim 3

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami , in further in view of US Patent #4,908,713 to Levine as was set forth above for claim 4. Additionally:

Each broadcast has its own EPG server in the modified system of Haagen.

13. **Claim 6/1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami, in further in view of US Patent #4,908,713 to Levine as was set forth above (i.e., with respect to claim 2).**

In the modified system of Haagen, the "periodic" nature of EPG access is determined inherently by the periodic nature of user inputs.

14. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami , in further in view of US Patent #4,908,713 to Levine as was set forth above for claim 6. Additionally:

In the modified system of Haagen, the "periodic" nature of EPG access is determined inherently by the periodic nature of user inputs, which would vary over time and, as such, differ from station to station.

15. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami , in further in view of US Patent #4,908,713 to Levine as was set forth above for claim 2. Additionally:

In the modified system of Haagen, the EPG access would occur every day if the when the user accesses to EPG for a given station "every day".

16. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami as was set forth above for claim 1. Additionally:

i.e., an "external" web serving device in the case of the modified system of Haagen

17. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami as was set forth above for claim 1. Additionally:

The examiner takes Official Notice that it was notoriously well known in the electrical/communications arts to have implemented systems via hardware or software; i.e., wherein software implementations were known to have been advantageous in the reduced cost of a general purpose processor and ease of updating (i.e., in contrast to dedicated circuitry).

18. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication #2007/0072542 to Haagen in view of US Patent Document #2003/0061618 to Horiuchi et al and Japanese Patent Document #JP 2003-31927 to Matsugami as was set forth above for claim 1. Additionally:

i.e., an "external" web serving device in the case of the modified system of Haagen

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID E. HARVEY whose telephone number is (571) 272-7345. The examiner can normally be reached on M-F from 6:00AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Peter-Anthony Pappas, can be reached on (571) 272-7646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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